

1  
2  
3  
4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT SEATTLE

7 IN RE: PHENYLPROPANOLAMINE  
8 (PPA) PRODUCTS LIABILITY  
9 LITIGATION,

MDL NO. 1407

ORDER GRANTING  
PLAINTIFF'S MOTION TO  
REMAND

10 This document relates to:

11 Roberts v. Bayer Corp., et  
12 al., No. C03-847

13 THIS MATTER comes before the Court on the motion of  
14 plaintiff Leroy Roberts, on behalf of his brother, Michael  
15 Roberts ("plaintiff"), to remand the case to state court in  
16 Mississippi. Having reviewed the papers filed in support of and  
17 in opposition to this motion, the Court rules as follows:

18 Plaintiff's complaint alleges that Michael Roberts suffered  
19 a fatal stroke after consuming a PPA-containing product sold to  
20 him by Morris Oil of Mississippi, Inc. d/b/a/ Shell Food Mart  
21 ("Shell"), a Mississippi company. If Shell is properly joined,  
22 the complete diversity of citizenship necessary for federal  
23 jurisdiction would be lacking. Defendants removed this action  
24 alleging that plaintiff fraudulently joined Shell solely to  
25 defeat diversity. Plaintiff moved to remand to state court.  
26 This case been transferred to this Court as part of multi-

ORDER

Page - 1 -

1 district litigation ("MDL") No. 1407.

2 The removing party has the burden of proving that removal  
3 was proper and that this Court has jurisdiction. See, e.g., Gaus  
4 v. Miles, Inc., 980 F.2d 564, 566 (9<sup>th</sup> Cir. 1992).<sup>1</sup> Joinder of a  
5 non-diverse party is deemed fraudulent "if the plaintiff fails to  
6 state a cause of action against a resident defendant, and the  
7 failure is obvious according to the settled rules of the state."  
8 Morris v. Princess Cruises, Inc., 236 F.3d 1061, 1067-68 (9<sup>th</sup>  
9 Cir. 2001) (internal citation and quotation omitted). The Court  
10 therefore looks to the settled rules of Mississippi to determine  
11 if plaintiff has stated a cause of action against Shell.

12 Under Mississippi law, to state a claim for negligence or  
13 products liability, plaintiff must show that Shell knew or should  
14 have known about the dangers of PPA during the relevant time  
15 period. See Miss. Code Ann. § 11-1-63; see also Louis v. Wyeth-  
16 Ayerst Pharm., Inc., No. 5:00CV102LN, slip op. at 5-9 (S.D. Miss.  
17 Sep. 25, 2000).

18 Plaintiff alleges that Shell sold him the PPA-containing  
19 product over six months after the FDA issued a public health  
20 advisory enumerating the risks associated with PPA. Defendants  
21 have not refuted this allegation or provided any evidence to  
22

---

23 <sup>1</sup>As an MDL court sitting in the Ninth Circuit, this court  
24 applies the Ninth Circuit's fraudulent joinder standards to the  
25 motion to remand. See, e.g., In re Diet Drugs Prods. Liab.  
26 Litig., 220 F. Supp. 2d 414, 423 (E.D. Pa. 2002); see also  
Menowitz v. Brown, 991 F.2d 36, 40-41 (2d Cir. 1993).

1 counter plaintiff's claim that the timing of the advisory is  
2 evidence that Shell knew or should have known of the dangers of  
3 PPA when it sold him the PPA-containing product. The Court  
4 therefore finds that plaintiff's complaint states a cause of  
5 action against Shell, and therefore Shell was not fraudulently  
6 joined.

7 For the foregoing reasons, the Court finds that complete  
8 diversity does not exist. The Court GRANTS plaintiff's motion to  
9 remand this case to state court and ORDERS that this case be  
10 remanded to the circuit court of Marion County, Mississippi,  
11 where it was previously assigned Civil Action No. 2002-0288.

12 DATED at Seattle, Washington this 18th day of May, 2004.

13  
14 s/ Barbara Jacobs Rothstein  
15 BARBARA JACOBS ROTHSTEIN  
16 UNITED STATES DISTRICT JUDGE  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26